

## REMARKS

### *Status of Claims*

Claims 1 – 73 were original in the application. Claims 1 – 34, 41 – 45, 48, and 57 – 73 have been withdrawn and cancelled without prejudice. Claim 35 has been currently amended. Claims 35 – 40, 46, 47, and 49 – 56 as amended or originally filed are submitted as set forth in a clearly allowable condition or at least in a better form for appeal.

### *Rejection Pursuant to 35 USC 112*

The Examiner rejects claims 35 – 40, 46, 47, and 49 – 56 for not describing how the apparatus temporally<sup>1</sup> causing a tissue change and permanently causing a tissue change. A shaped electrode temporarily causes the cartilage to deform to or be held in the shape desired and the applied voltage to the electrode causes that temporary shape to become permanent.

### *Rejection Pursuant to 35 USC 102(e)*

Claims 35 – 62 continue to be rejected on the ground that RF ablation electrode

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<sup>1</sup> tem·po·ral<sup>1</sup>  
adj.

1. Of, relating to, or limited by time: a temporal dimension; temporal and spatial boundaries.

2. Of or relating to the material world; worldly: the temporal possessions of the Church.

3. Lasting only for a time; not eternal; passing: our temporal existence.

4. Secular or lay; civil: lords temporal and spiritual.

5. Grammar Expressing time: a temporal adverb.

“Temporary” could be a synonym for “temporal”.

of Balbierz is capable of the intended use of the claimed means structures.

The applicant respectfully disagrees. The functional limitations in the means claims are deemed structural under section 112 and are not statements of intended purpose, which are nonstructural statements which do not limit the structure of the claimed elements, *In re Schreiber*, 44 USPQ2d 1429 (1997). Balbierz must show each and every element of the defined structure in the functionally defined means elements.

Balbierz is not capable of shaping cartilage to any predetermined shape. The electrodes of Fig. 9 do not lend themselves to shaping tissue, but merely to pushing it into whatever shape the structure of the tissue might take in response to an applied nonshaping force. While an electrode pushing tissue can be expected to cause the shape of the object to change, that definition of the shape of that change will not be controlled or predetermined by the electrode, but will depend on the nature of the tissue which is being pushed or pulled. No one would want their nose or ears shaped merely by use or pushing on the nose or ears by the electrodes of Balbierz' Fig. 9, even if somehow an appropriate shaping voltage were applied instead of the ablating or destructive voltage which Balbierz discloses.

The defining functions of the means elements, which are the defining structural portions of the claims, are not disclosed in Balbierz. Hence, the structure claimed is similarly not disclosed in Balbierz. It is not sufficient to merely state that any electrode with any voltage used in any some other way could be used to performed undisclosed defining functions for cartilage reshaping.

As applied Balbierz could be used for anticipating any use of any electrode with any voltage. From this perspective, every and any biomedical invention which uses an

electrode and a voltage is anticipated by Balbierz, including every heart pacemaker lead ever made, every neurological stimulating probe ever made, every brain aneurysm occluding coil ever made and so on. Because this position is untenable because of its illogic and incredulous hindsight perspective, it is clearly wrong. However, it is just this proposition that is the very basis on which the cartilage electroforming electrode of the present claims are being rejected. Reconsideration is respectfully requested.

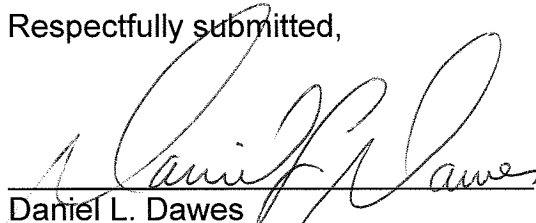
Applicant respectfully requests advancement of the claims to allowance.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 17, 2007 by

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Signature

May 17, 2007

Respectfully submitted,



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